



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Removal of a Sign Owned or  
Controlled by T. J. Rudolph, President of Merrill  
Equipment Company

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Case No. 98-H-1078

**FINAL DECISION**

On January 8, 1998, the Wisconsin Department of Transportation issued a letter notifying Merrill Equipment Company that a sign erected on the east side of United States Highway, at the intersection County Trunk Highway H in Lincoln County, was illegal and must be removed. On March 11, 1998, T. J. Rudolph, president of Merrill Equipment Company, requested a hearing to review the order. On June 4, 1998, the Department of Transportation filed a request with the Division of Hearings and Appeals to hold a hearing in this matter.

Pursuant to due notice a hearing was held in Wausau on July 31, 1998, before Mark J. Kaiser, Administrative Law Judge (ALJ). During the hearing a question was raised whether the subject sign was actually owned by Whiteco Outdoor Advertising. By letter dated August 14, 1998, Carol Ann Hall, on behalf of Whiteco Outdoor Advertising, denied any ownership interest in the subject sign.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows.

Merrill Equipment Company, by

T. J. Rudolph, president  
2209 Sturdevant Street  
Merrill, WI 54452

Joseph M. Breaman  
W5108 County Trunk Highway H  
Irma, WI 54442

Wisconsin Department of Transportation, by

Barbara Bird, Attorney  
P. O. Box 7910  
Madison, WI 53707-7910

The ALJ issued a proposed decision on September 10, 1998. No objections to the proposed decision were filed. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. Joseph Breaman owns real property located at the intersection of United States Highway 51 (USH 51) and County Trunk Highway H (CTH "H"). The property is located in the Town of Rock Falls, Lincoln County. The legal description of the property is the SW1/4 of the NE1/4 of Section 25 Township 33 North, Range 6 East. USH 51 is a federal-aid primary highway. The Breaman property is unzoned.

2. Joseph Breaman entered into negotiations with Whiteco Outdoor Advertising (Whiteco) to construct several outdoor advertising signs on the property. On May 7, 1997, Mr. Breaman executed an eight-year lease allowing Whiteco to construct and maintain an outdoor advertising sign on his property in exchange for twenty percent of the net receipts generated by the sign. This lease was "accepted by" Whiteco on June 16, 1997.

3. By applications dated August 8, 1997, Whiteco applied to the Wisconsin Department of Transportation (Department) for permits for two V-shaped off-premise outdoor advertising signs on the Breaman property. The proposed signs were 10.5 feet high by 36 feet wide in size. By letter dated January 13, 1998, the Department denied the applications. The stated reason for the denials was that the site for the proposed signs was unzoned. For an off-premise sign to be eligible for a permit in an unzoned area it must be located within 800 feet of an ongoing business. The Department determined that the proposed signs were not located within 800 feet of an ongoing business.

4. During the pendency of the permit applications, Whiteco erected an outdoor advertising sign on the Breaman property. The subject sign is a single-faced sign, twelve feet by twelve feet in size. It is located within 660 feet of the USH 51 right-of-way and is designed to be visible from USH 51. The sign advertises "Boat Lifts by Allen Docks."

5. Allen Docks are manufactured by Merrill Equipment Company. T. J. Rudolph is the president of Merrill Equipment Company. Merrill Equipment Company is currently located at 2209 Sturdevant Street, Merrill, Wisconsin. T. J. Rudolph has purchased a former truck stop located on County Trunk Highway K (CTH "K"). Mr. Rudolph hopes to use this property as a combination factory/showroom.

6. Whiteco also graded a "demo plot" on the Breaman property on which T. J. Rudolph placed a sample dock and boatlift. This sample is intended for potential customers to view the product. However, there are no sales representatives at the site or signs indicating the public is invited to test the product at the site. The telephone number listed on the sign is a toll free number for the Merrill office.

7. The sign erected by Whiteco is designed so that the name "Merrill" can easily be replaced by the phrase "Next Right." Mr. Rudolph testified that eventually it will be a directional sign and "Next Right" will either direct customers to the proposed showroom on CTH "K" or to the "demo plot" at the sign site.

8. The Department issued a letter requiring removal of the subject sign to T. J. Rudolph on January 8, 1998. By letter dated January 23, 1998, Mr. Rudolph argued that the sign should be permitted as an on-premise sign. By letter dated January 27, 1998, the Department rejected this argument. By letter dated March 11, 1998, Mr. Rudolph renewed his argument that the sign was an on-premise sign and requested a hearing to review the Department's decision.

9. The subject sign is owned by Joseph Breaman and controlled by T.J. Rudolph. It was erected in the adjacent area of a federal-aid primary highway and is visible from the main-traveled way of USH 51. The sign can not be maintained without a permit from the Department. No permit was issued; therefore, the subject sign is unlawful and subject to removal.

#### Discussion

At the hearing, confusion existed regarding ownership of the subject sign. Mr. Breaman prepared an exhibit (exh. 22) consisting of a set of documents describing the history of his attempts to lease his frontage along USH 51 for the construction of outdoor advertising signs. Exh. 22 contains five drafts of a sign location lease executed by Mr. Breaman and Whiteco and dated May 7, 1997. Mr. Breaman testified that the final draft is the one also signed by Joe Little on June 16, 1997.

All five drafts describe a "demo plot" to be bulldozed on the property by Whiteco. Two of the drafts also describe a 144 square foot on-premise sign which Whiteco agreed to construct on the Breaman property apparently in consideration for constructing the proposed off-premise signs on the site. However, it does not appear from any of the documents in exh. 22 that Whiteco leased a site for the on-premise sign. There is also no record that Whiteco ever applied for a permit for the on-premise sign. By letter dated August 14, 1998, Whiteco denied any interest in the subject sign. Mr. Breaman and Mr. Rudolph testified that they understood that Whiteco would obtain a permit for the on-premise sign; however, this understanding is not reflected in any of the leases.

A reasonable inference that can be drawn from the evidence in the record is that Whiteco was willing to bulldoze the "demo plot" and erect a sign related to this plot at its expense in order to qualify the site as an unzoned commercial area. If the site was an unzoned commercial

area, then Whiteco could obtain permits for off-premise signs on the Breaman property. When the Department denied the applications for the off-premise signs, Whiteco did not appeal the denials of the permit applications and abandoned the on-premise sign. Since the sign structure is located on Mr. Breaman's property, it is reasonable to find that he is now the owner of the sign. However, because the sign advertises Mr. Rudolph's business and he determined the message content of the sign, it is reasonable to find that he controls the sign.

An outdoor advertising sign that is visible from the main-traveled way of a federal-aid primary highway can not be erected or maintained without a permit. A permit has never been issued for the subject sign; therefore, for this reason alone, the Department's removal order must be affirmed. T. J. Rudolph and Joseph Breaman relied on Whiteco to obtain the necessary permit for the subject sign. The uncontroverted evidence in the record is that Whiteco applied for permits for off-premise outdoor advertising signs on the Breaman property but the applications were denied. No application for a permit for the sign that is the subject of this hearing was ever filed.

No application for a permit for the subject sign was filed; therefore, the issue of whether the subject sign is eligible for a permit is beyond the scope of this hearing. However, extensive testimony was presented on this issue and it will be addressed briefly. The Department argues that under current conditions, the sign is not eligible for a permit. Mr. Rudolph argues that the presence of the boat dock and boatlift indicate that he is doing business at this site and the subject sign qualifies as an on-premise sign. The present level of activity at this site does not qualify it as a business location for Allen Docks or Merrill Equipment Company. Although Mr. Rudolph and Mr. Breaman testified that several people have walked on to the site and looked at the boat dock and boat lift, Allen Docks has no sales personnel or other presence at this site. Persons calling the telephone number on the sign will be directed to a retail dealer for Allen Docks. Mr. Rudolph also testified that ultimately the sign will probably direct customers to a showroom in Merrill. The level of activity presently occurring on this site is insufficient for it to be considered an ongoing business that would qualify for an on-premise advertising sign.

At the hearing, Mr. Rudolph and Mr. Breaman testified about their plans for developing this property. The plans include a more extensive display of boat docks and lifts and/or the construction of rental storage buildings. After the site is developed, it may well qualify as an unzoned commercial area; however, at this time it does not. It is not appropriate to permit the subject sign based upon Mr. Rudolph's or Mr. Breaman's plans for the site. The subject sign does not qualify at this time for a permit either as an on-premise sign or as an off-premise sign located in an unzoned commercial area. --- -

#### Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. Sec. 84.30(3), Stats., an outdoor advertising sign can not be erected or maintained in the adjacent area of a federal-aid primary highway without a sign permit.

2. The subject sign was erected without a permit; therefore, it can not lawfully be maintained. Additionally, based upon the evidence in the record, the subject sign does not appear to qualify for a permit either as an on-premise sign or an off-premise sign located within an unzoned commercial area.

3. Pursuant to secs. 84.30(18) and 227.43(1)(bg), Wis. Stats., the Division of Hearings and Appeals has the authority to issue the following order:

Order

The Administrator orders:

The removal order issued by the Department set forth in the letter dated January 8, 1998, is affirmed.

Dated at Madison, Wisconsin on September 28, 1998

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